CITY OF NEWBERG COUNCIL MINUTES
APRIL 7, 2008
7:00 P.M. MEETING
PUBLIC SAFETY BUILDING TRAINING ROOM

Work Session was held prior to this meeting. A presentation was made on franchise agreements for telephone services. A presentation was also made on Newberg's Farmer's Market. No decisions were made.

I. CALL MEETING TO ORDER

Mayor Bob Andrews called the meeting to order at 7:01 PM.

II. ROLL CALL

Members Present:	Mayor Bob Andrews	Mike Boyes	Roger Currier	Bob Larson
	Jeff Palmer	Bart Rierson	Marc Shelton	

Staff Present:	Robert I. Tardiff, City Manager Pro Tem	Dan Danicic, Public Works Director
	Barton Brierley, Planning and Building Director	Terrence Mahr, City Attorney
	Brian Casey, Police Chief	Elizabeth Comfort, Finance Director
	Jennifer L. Nelson, Recording Secretary	

Others Present: Darlyn Adams, Daniel Ernster, Matthew J. Michel, Michael Roos, Elizabeth Roos, Virginia Jungwirth, Paul Jellum, Jessica Cain, David Grove, Kevin J. Kinney, Robert Soppe, Gene McKee, John Rekow, James McCall, Teresa McCall, Cheryl Gaibler, Stan Gaibler, Richard N. Senz, Rhonda L. Senz, Gloria Dreske, Alan Meyer, Richard Taeubel, George Bauer, Matson Haug, Charles Zickefoose,

III. *PLEDGE OF ALLEGIANCE*

The Pledge of Allegiance was performed.

IV. CITY MANAGER'S REPORT

Mr. Robert I. Tardiff, City Manager Pro Tem, reported on the Old Fashioned Festival past donations and asked who was interested in riding on the truck, a meeting with Dundee planning for interest in services from Newberg, and an economic video link on the City website.

V. PUBLIC COMMENTS

TIME – 7:08 PM

Ms. Darlyn Adams, representing the Newberg Animal Shelter Friends, reported their building fund total at $317,250.63. A Loving Pet Remembrance to be held at North Valley Friends Church on April 12, 2008 and the Mega Yard and Plant Sale will be May 2-3, 2008 at Zion Lutheran Church. The next meeting will be held on April 17th at 7:30 PM (see official record for full report).

Mr. Daniel Ernster offered information to the Council concerning liquefied natural gas importing and asked to be placed on the agenda to discuss concerns and provide information. He wondered if the City would be willing to get on board to pass a resolution similar to Forest Grove; to decide what the community wants concerning this type of pipeline.

Mayor Andrews replied he was unsure whether the Council held jurisdictional prerogative on this matter and thanked him for bringing it to their attention.

VI. APPOINTMENTS

Consider a motion approving **Resolution No. 2008-2777** where the City Council appointments Daniel J. Danicic as the City Manager of the City of Newberg and authorizing the Mayor to enter into an Employment Agreement with Daniel J. Danicic on behalf of the City.

This item was pulled from the agenda and moved to the end of the meeting after Executive Session.

VII. CONSENT CALENDAR

1. Consider a motion approving **Resolution No. 2008-2775** filling two police officer positions in the Police Department.

This item was pulled from the Consent Calendar and heard under New Business.

2. Consider a motion approving City Council Minutes for March 3, 2008.

MOTION: Rierson/Larson to approve the Consent Calendar including the City Council Minutes for March 3, 2008. (Unanimous) Motion carried.

VIII. PUBLIC HEARING

1. Consider a motion approving **Resolution No. 2008-2776** establishing a Spring System Customer Class and rate in the water rate structure effective July 1, 2008.

TIME – 7:20 PM

Mayor Andrews called for any biases, conflicts of interest, ex parte contact, or abstentions; none stated.

Mr. Daniel Danicic, Public Works Director, presented a staff report on the history of the Spring System Customer Class and rates (see official record for full report).

Mr. Terrence Mahr, City Attorney, presented the staff report on the resolution assisted by **Mr. Matthew Michel, Attorney from Beery Elsner & Hammond** (see official record for full report).

Discussions followed concerning the operation and maintenance (O&M) costs for the system and the thousand gallons of free water rights promised to the original twenty-four property owners in the 1924 agreement which does not include subdivisions. The costs for the capital improvements to the system and typical usage were also noted.

Mayor Andrews opened public testimony. Several citizens deferred their testimonies to **Mr. Michael Roos** and he was asked to limit his presentation to no more than thirty minutes.

Opponents:

Mr. Michael Roos distributed copies and made a presentation via PowerPoint concerning the families that live in the area, the economic impact of the capital improvement increases, and honoring the agreement the City made with their predecessors by spreading the costs amongst all users (see official record for full report).

Councilor Roger Currier referred to the agreement mentioned and discussed the one thousand gallons of free water per month being for residential use only, not manufacturing or commercial purposes. He noted having no memory of approving a residential hardship case for a springs water customer.

Mr. Roos mentioned an editorial comment submitted to The Newberg Graphic and clarified some of the statements made by Councilor Currier that he felt were not clear; they are not asking the City to replace the entire system, just to fulfill their obligation to supply the original agreement members water that met the required standards of the law. Staff confirmed the City was under obligation to keep the system in working condition according to the contract.

Councilor Jeff Palmer asked staff about comments made that the City uses springs water during shortages and what their opinion of the proposal to spread the increase over a period of four years. Staff replied the springs produce the lowest volume during the summer, which is when shortages take place, and the springs would be unable to keep up with the demand. He did not foresee the springs having significant benefit to the City with peak demand at seven million gallons. As for the increase over a four year period at 12%, it is a financial decision to either make small payments up front and larger payments at the end or vice versa.

Councilor Mike Boyes questioned when staff anticipated a shortage of pumping activity from the well field and if the springs would provide the necessary backup. Staff replied the plans at this point would reach the maximum in the year 2040 and the Springs is not a guaranteed source of water and additional connections would have an even greater affect on the system.

Ms. Virginia Jungwirth spoke of concerns for the bill for this being passed down to their children and grandchildren. She spoke of the original twenty-four houses from the 1922 agreement and felt twenty-five houses would void the contract.

Mr. Paul Jellum spoke of the agreement benefiting the City while using the water from the springs for years and the 50% surcharge to users of the system now outside of the City. He felt the City was changing the rules now because they did not want to pay the necessary costs to upgrade, which are more than the revenue the springs are bringing in now. He understands this but does not feel it is fair to the property owners in the area. He said some of the proposal is reasonable in terms of sharing the costs, but it is strange to put more of the cost back on the original twenty-four in the agreement.

Ms. Jessica Cain, Attorney for Gunn, Cain, & Kinney, LLP, represented **Mr. David Groves** and **Mr. Kevin Kinney**, part of 68 users subject to the increases. She spoke of the City's duty to the original twenty-four property owners including repair and maintenance to the system. She spoke of the City's utilization of the system for over one hundred years to benefit the entire population, mentioning the springs water accounts for 10% of the water to the entire City. She spoke of the 150% charge for use, the opposition of the users, and the allocation of the costs system wide (increasing the rates $0.32 for all rather than $2.49 for springs customers).

Councilor Bart Rierson said he understood the City's obligation for operation and maintenance of the springs system, but asked staff who is obligated to pay for this.

Mr. Mahr replied the City agreed to give water to the original members of the agreement and keep up the system, but they can also charge rates to do that. By establishing a customer class then capital improvements can be legitimately recovered through payment of water rates.

Councilor Rierson asked staff if the 150% rate springs class users currently pay covers the actual costs. Staff replied the estimate for O&M for the system is currently at $38,000 and the revenue is only $33,000. There is no historical comparison available.

Councilor Palmer questioned the comment about the springs water accounting for 10% of the City's volume. Staff replied it is more accurate to say all the volume produced by the springs vs. the well field is 10%, but that does not mean it provides 10% of what is consumed by the City since a larger amount of that goes to the springs customers. He also clarified comments about Oliver springs "sucking air" meant during one summer they could not keep the pipes full and some users experience a lack of water or low pressure.

Mr. David Grove commented the consultant's report stated the City stopped using the Oliver springs in 2005, which is incorrect. He felt there were two ways to share, by creating a customer class or by sharing the costs system wide amongst all users. He spoke of the City retaining the water rights as well as the dilapidation of the springs. He felt the springs were an asset to the City and should be taken care of according to the obligation.

Mr. Kevin Kinney quoted the 1922 agreement concerning the City's obligation to maintain and operate the system at their expense in a state of good repair ensuring successors serviceable flow of water. He felt the City was trying to run around that agreement by creating a different class and felt it was in bad faith.

Undecided:

Mr. Robert Soppe supported the City's obligation to uphold the agreement to the original properties but pointed out they did not need to go beyond that. He felt the proposal was unclear about continuing to provide the one thousand gallons free to the original twenty-four. He was concerned why the Citizen Rate Review Committee (CRRC) felt 50% of improvement costs were reasonable because it was not addressed in the minutes. He also spoke of the current operation costs being in deficit and did not feel that burden for excess cash being on the City was a good justification. He felt consideration should be given to separate the two systems physically and economically with the City maintaining it on a cost basis.

Mayor Andrews closed public testimony.

Councilor Marc Shelton asked about the 50% contingency and what is the engineering estimate. Staff explained the contingency practice and replied they would not know for sure until bids are received.

Councilor Bob Larson asked if the proposal to spread the rate increase over four years was possible. Staff replied it was.

Councilor Palmer asked for assurance that an establishment of special rate is defensible. Legal counsel replied they were confident it could be justified.

Mayor Andrews closed the public hearing.

Councilor Currier spoke on the background of the issue and asked how the voters would feel about paying for these improvement costs. He mentioned other water districts outside of City paying 150% fee and maintaining the lines themselves. He felt the City would be fulfilling their obligations to provide the operation and maintenance by creating a separate class.

Councilor Rierson felt the City should stand behind the agreement to provide the one thousand gallons per month to the twenty-four users, but was not opposed to sharing the costs because everyone needs water and the City did benefit from the springs in the past.

Councilor Larson stated he was in favor of the resolution if it were spread out over four years.

Councilor Palmer agreed.

Mayor Andrews spoke of the costs to maintain exceeding the revenue. He also spoke of there being, essentially, two classes within a class; the original twenty-four in the agreement and the other forty-four that have connected since then.

Councilor Shelton pointed out inconsistencies in the idea that only one thousand gallons for twenty-four owners was provided since some receive up to three thousand gallons for free. Staff did verify some users receive more than the one thousand gallons and there are also some that get water directly from the spring box.

Councilor Palmer spoke of the unfairness of some users receiving a limitless supply of water at no charge unless there are existing agreements. Staff replied there were contractual agreements with those people.

Discussion followed recapping the background of agreements with some users and not with others and how some maintained their own water rights to the springs.

MOTION: Larson/Rierson to approve **Resolution No. 2008-2776** establishing a Spring System Customer Class and rate in the water rate structure effective July 1, 2008 with a progressive increase in the rate over a four year period.

Councilor Palmer felt he could vote in favor with the four year proposal but expressed concerns for a future problem with limitless water supply at no charge.

Councilor Currier still disagreed with the 50% of the costs being placed on the City.

Councilor Rierson suggested passing the resolution and continuing discussions at a later time concerning the problem of limitless water supply to some after more research.

VOTE: To approve **Resolution No. 2008-2776** with a progressive increase in the rate over a four year period (3 Yes [Larson, Shelton, Rierson]/4 No [Boyes, Currier, Palmer, Andrews]) Motion failed.

MOTION: Currier/ to wait until the line is disconnected in June 2008 to establish a rate incorporating the total cost to the users of the Spring system for operation and maintenance and improvements according to state laws. Motion fails for lack of a second.

MOTION: Palmer/Currier to table **Resolution No. 2008-2776** for further review and reconsideration on June 2, 2008.

VOTE: To table **Resolution No. 2008-2776** for further review and reconsideration on June 2, 2008 including a step increase in rates rather than a lump sum. (Unanimous) Motion carried.

Mayor Andrews recessed at 9:45 PM for five minutes.

2. Consider a motion approving **Ordinance No. 2008-2694** vacating a portion of Providence Drive in order to move the right-of-way and straighten out the roadway.

TIME – 9:53 PM

Mayor Andrews called for any biases, conflicts of interest, ex parte contact, or abstentions; none stated.

Barton Brierley, Planning and Building Director, presented the staff report (see official record for full report).

Discussion followed concerning the typical process for road dedication and vacation, moving the road east because of ODOT's modifications for the intended bypass, City right of way, and the barricade being in place for another month or so.

MOTION: Shelton/Palmer to approve **Ordinance No. 2008-2694** vacating a portion of Providence Drive in order to move the right-of-way and straighten out the roadway with staff corrections and read by title only. (6 Yes/1 No [Boyes]) Motion carried.

IX. CONTINUED BUSINESS

1. Consider a motion approving **Resolution No. 2008-2761** establishing a reservation permit application, fee and refundable deposit policy for Francis Square and the Memorial Park Gazebo.

TIME – 10:07 PM

Mr. Danicic presented the staff report, noting changes made (see official record for full report).

Mayor Andrews asked why Unity Park was not included. Staff replied this was not a site that someone would reserve in advance for a permit type event.

Councilor Rierson asked why the open space across from City Hall was also not included. Staff replied this area is undeveloped commercial land and there would be concerns the public would become accustomed to using that space long term, jeopardizing future use as commercial property.

Councilor Palmer asked if there was any thought to different charges based on applicants being residence vs. non-residence. Staff replied the same fees applied to all. He also suggested changing the language for the "refundable" fee to a security deposit.

Discussion followed concerning language changes for challenges to staff decisions, any change in fees and/or deposit amounts requiring report to Council, and developing a blanket appellant process.

MOTION: Andrews/Palmer to amend **Resolution No. 2008-2761** adding a new item 3 requiring any change in fees and/or deposit amounts to be reported by the City Manager to Council thirty (30) days prior to implementation, changing the current item 3 to item 4, and to further discuss an appellant process to review staff decisions. (Unanimous) Motion carried.

MOTION: Larson/Shelton to approve **Resolution No. 2008-2761** establishing a reservation permit application, fee and refundable deposit policy for Francis Square and the Memorial Park Gazebo as amended. (Unanimous) Motion carried.

2. Consider a motion approving **Resolution No. 2008-2765** providing a program for assistance to low-income homeowners assessed for cost of local improvement through an LID.

TIME – 10:32 PM

Mr. Mahr presented the staff report with changes included (see official record for full report).

Mayor Andrews suggested a correction on page 79 to include principal plus accrued interest when discussing the assessment payable upon sale or change in ownership. He also felt the chart addressing low and moderate income limits in Table D was confusing. Discussions followed that alignment was incorrect and the figures are properly represented in the legal bulletin from March 21, 2008. Staff stated it would be reformatted to correct. Corrections were also addressed to the same page 79 concerning the reapplication notification at time of assessment; changes to state at same time of annual payment due on assessment.

Councilor Larson suggested renewal application was a better term than re-application.

Mayor Andrews referred to page 80 and the program availability being only at the beginning of the Local Improvement District (LID) and asked how changes in income status would be addressed if they occurred after the LID. Discussions followed to determine if a policy would be created to address this matter.

Councilor Rierson stated the whole reason for this resolution is to keep residents from losing their homes because of costs associated with LIDs. He felt that whatever the reason, when they reach this income level the City should help because they have a duty to look out for citizens in need.

MOTION: Larson/Palmer to adopt **Resolution No. 2008-2765** providing a program for assistance to low-income homeowners assessed for cost of local improvement through an LID.

Mayor Andrews asked about deferring the principal while making interest only payments as possible option for an amendment. Staff discussed the difficulty of tracking and the fact the City is not a financial institution; the only way to do this is to create another class.

Discussions followed concerning corrections to the number of days (10) for an appeal to the City Manager's decision and the language used. The language determined for an appeal was to be made in writing within thirty (30) calendar days of the notice of the decision.

MOTION: Andrews/Larson to make four amendments to **Resolution No. 2008-2765**; in resolve 2. change last sentence to include both principal and interest after the entire assessment; in 4.e) change last sentence to at same time as notification of annual payment due on assessment; in 4.h) change to at beginning of the LID process and on an annual basis determined by the finance; and in 5. for an appeal to be submitted within 30 calendar days of the notice of the decision. (Unanimous) Motion carried.

VOTE: To approve **Resolution No. 2008-2765** as amended. (Unanimous) Motion carried.

3. Consider a motion providing feedback on the presentation by the Chehalem Valley Chamber of Commerce Urban Renewal District Task Force.

TIME – 11:05 PM

Mr. Mahr presented the staff report and noted amendments (see official record for full report).

Councilor Boyes asked for some clarifications as to process after approval tonight and how things would be reported back to Council. Staff discussed the procedures.

MOTION: Larson/Shelton to approve the presentation by the Chehalem Valley Chamber of Commerce Urban Renewal District Task Force as amended. (6 Yes/1 No [Currier]) Motion carried.

X. NEW BUSINESS

1. Consider a motion approving **Resolution No. 2008-2775** filling two police officer positions in the Police Department.

TIME – 11:09 PM

This item was heard out of agenda order.

Mr. Tardiff presented the staff report (see official record for full report).

Discussions followed concerning the details of the computer forensics position.

MOTION: Currier/Palmer to approve **Resolution No. 2008-2775** filling two police officer positions in the Police Department. (Unanimous) Motion carried.

XI. COUNCIL BUSINESS

This item was heard after the Executive Session.

XII. EXECUTIVE SESSION

Executive Session pursuant to ORS 192.660(2)(a) relating to employment of a public officer – City Manager Recruitment.

TIME – 11:12 PM

VI. APPOINTMENTS

Consider a motion approving **Resolution No. 2008-2777** where the City Council appointments Daniel J. Danicic as the City Manager of the City of Newberg and authorizing the Mayor to enter into an Employment Agreement with Daniel J. Danicic on behalf of the City.

TIME – 11:25 PM

This item was heard out of agenda order.

MOTION: Currier/Larson to approve **Resolution No. 2008-2777** where the City Council appointments Daniel J. Danicic as the City Manager of the City of Newberg and authorizing the Mayor to enter into an Employment Agreement with Daniel J. Danicic on behalf of the City. (Unanimous) Motion carried.

XI. COUNCIL BUSINESS

Councilor Currier requested a copy of the original agreement between the City and the original twenty-four springs users to be distributed to all Council members. Further discussion followed concerning requests for staff further research.

Councilor Palmer announced his plans to relocate to Texas upon sale of their home.

Councilor Currier mentioned garage sale signs and developing a common sign with deposit. He spoke of Tigard making it illegal to place signage in the right of way.

XIII. ADJOURNMENT

MOTION: Larson/Palmer to adjourn at 11:43 PM (Unanimous) Motion carried.

ADOPTED by the Newberg City Council this 5th day of May, 2008.

Norma I. Alley

Norma I. Alley, City Recorder

ATTEST by the Mayor this 8th day of May, 2008.

Bob Andrews

Bob Andrews, Mayor